



DELAWARE NUTRIENT MANAGEMENT

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The Delaware Nutrient Management Commission Amended Minutes of the Full Commission Meeting Held December 12, 2006

In attendance:

<i>Commission Members Present</i>	<i>Others Present</i>	
B. Vanderwende – Chair	M. Cooke, DAG	J. Parsons
M. Adkins	D. Absher	P. Sample
D. Baker	J. Baxter	S. Schwalb
R. Baldwin	M. Brown	J. Smith
K. Blessing	K. Bunting-Howarth	D. Willey
A. Johnson	B. Coleman	J. Kelly
T. Keen	J. DeYoung	
C. Larimore	P. Diehl	
J. Manchester	K. Foskey	
B. O'Neill	T. Garrahan	
C. Solberg	S. Hollenbeck	
R. Sterling	J. Kelly	
C. West	S. Kepfer	

<i>Commission Members Absent</i>	<i>Ex-officios Present</i>	
E. Lewandowski	W. Rohrer	
	M. Scuse	
	J. A. Hughes	
	J. Mack for G. Llewellyn	

This meeting was properly notified and posted as required by 29 Del. C. §10004 et al.

Call to Order/Welcome:

Chairman B. Vanderwende called the meeting to order at 7:00 p.m. and welcomed everyone in attendance.

Approval of Minutes:

C. Larimore motioned to approve the minutes of the November 14, 2006 Full Commission meeting.

A. Johnson seconded the motion, which passed unanimously.

Discussion and Action Items:

Review and act on final modifications to certification regulation:

D. Baker moved to take issue from table back onto floor for discussion.

M. Adkins seconded the motion, which passed unanimously.

B. Rohrer explained the process experienced by the Rules and Regulations Subcommittee and offered that the modifications to the certification regulations should be opened up to a 30 day period of public comment. He noted that the Full Commission may also call for another Public Hearing. He then explained that the changes are as follows:

- 1) CHANGE December 1 to December 7;
- 2) ADD Section 6.3 Exemption for nitrogen use on small grains
- 3) ADD Section 6.4 Exemption for farms limited by manure storage.

J. A. Hughes asked if the proposed regulations meet NRCS standards; it was determined that there were some differences. Discussion ensued concerning notification to farmers about EQIP program. It was decided that notification should come during EQIP application process. Mr. Hughes added that farmers will be deprived of certain opportunities for cost share, stating that DNREC will elaborate during the public comment period. D. Baker stressed that the Subcommittee had recognized the potential conflict with funding structures in place, and concluded that conflicts would be addressed as management decisions on the part of the farmer.

D. Baker moved that the Commission accept the recommendations of the Rules and Regulations Committee to adopt these changes.

C. Larimore seconded the motion,

J. Manchester stated that he feels there should be further public hearing on the proposed changes, which he considers to be substantive.

B. Vanderwende asked D. Baker to clarify his motion to include the 30-day period of public comment. D. Baker stated that was the intention of the Committee.

C. Solberg led a discussion about the references to the Annual Report and what kind of information must be contained there to track the exemptions used. It was agreed that the Annual Report must include location (field identification), acreage and rate of application (as identified in the Nutrient Management Plan). M. Scuse suggested putting into effect and reviewing after a year or two, making corrections at that point if necessary. J. Manchester stated that he does not agree with February 15 date, because he believes that soil temperatures don't rebound until around March 22. However, he bows to the compromise as established by the Subcommittee. B. Rohrer stated that we could establish a "check box" system with the Annual Reports, thereby segregating those that used exemptions and those that did not. In that way, we could have an instant feel for how many exemptions have been used.

D. Baker called to question.

C. Vanderwende asked that all in favor of accepting regulations raise right hand. Acceptance was unanimous.

Review and act on final modifications to mandate regulation: B. Rohrer stated that there have been no changes to the draft mandate regulations, which still stand in draft mode.

No action was taken on Mandate Regulations.

Perdue and EPA MOU Update: There were five representatives of Perdue present at the meeting: Steve Schwalb, Julie DeYoung, Jim Parsons, Jack Kelly, and Dick Willey. S. Schwalb gave a presentation stating that the Perdue-EPA MOU is for a *pilot program* only, and that the DNMC would have input on the final assessments. He stressed the following:

- The Perdue-EPA MOU is beneficial to the environment, Perdue growers, and Perdue.
- It is the intent of Perdue to include the states in the process, and Perdue is pleased to have an open dialogue, given the long valued history held with the Delaware Nutrient Management Commission. Perdue commits to updating this group, or individuals in this group that you designate as they move forward with this important initiative.
- Perdue has producers in 12 states, and their (environmental) programs must cross state lines, and the EPA is the only regulatory agency that oversees those 12 states.
- He explained how the pilot program is intended to work, and compared the scope of the Pilot Program with that of the Delaware Nutrient Management Program.
- No growers will be identified to the EPA. The desired outcome is more compliance, not punishment.

A spirited discussion ensued regarding Perdue's involvement with the EPA, and how that could adversely affect the producers. Mr. Schwalb continued to stress that this is a *pilot* program, and that at the end of the pilot period, there is "no commitment to continue if both parties don't agree that there has been progress." J. A. Hughes stated that he had questions. 1st question: Manure BMPs and outdoor storage... You are equating in the first column assessed under Assessment Area, you have words. The question is, are those words the same words that we used? We used, for instance, in manure BMPs, we understand the intricacies of poultry operations and the need for temporary outdoor storage. The

partners in this program do not agree with our assessment; that's a known fact. No secret. What's the definition? Is it our definition? Because if it is, then you have equated your standards for poultry growers under this program precisely with the Nutrient Management Plan that we have already approved. Which means that's an enthusiastic effort on your part, which I commend you; but, it's redundant and it's your business, that's fine. But, if there's a difference in the definition then we probably have issues. Mr. Schwalb answered that at this point, he didn't believe there were differences. He asked J. Parsons if there is a specific definition with the EPA. J. Parsons stated that Perdue and the EPA are working to finalize the details, but that there is nothing that deviates somewhat from the Federal government. S. Schwalb stated that Perdue's plan would be synonymous with Delaware's plan in this area. J. A. Hughes said "Well, that's fine. That's a very important statement. Your plan will be synonymous in Delaware with our plan." Mr. Schwalb said "And our assumption is that Delaware's plan would be no different than the law of the land." Sec. Hughes commented "That's an important statement." There were public concerns that entering into such an agreement with the EPA is a mistake. Public feels threatened and intimidated by the agency. K. Donnelly explained the Delaware CAFO situation, with the EPA not making final ruling after 5 years, stressing that cautions Perdue is hearing are valid. Mr. Schwalb countered that consistency between the 12 states (they do business in) is the ultimate goal...to educate, to provide assistance, and to be the assessor. J.A. Hughes asked if Perdue would report to the Commission on a quarterly basis, to share progress they are making. Mr. Schwalb stated that the farms subject to evaluation are those larger than 200,000 bird capacity, which excludes all but a few Delaware farms. After a brief discussion dealing with funding to Perdue, C. Larimore, Chairman of the Budget Subcommittee, called for a meeting of the Budget Subcommittee on Tuesday, December 19, 2006. The meeting was immediately scheduled and posted. Mr. Schwalb stated that Perdue is simply trying to take what Delaware has done to the EPA to show what CAN be done. Perdue contacted EPA Region III about how we could better deal with enforcement relative to poultry producers, a non-traditional regulated entity for the agency. EPA Region III responded to Perdue with a proposal for a pilot project, and Perdue agreed to partner with the Region. D. Willey addressed the Commission and expressed Jim Perdue's commitment to environmental issues and resolving this matter. J. Kelly addressed the Commission as well, and pointed out the necessity for cooperation from both organizations and highlighted the contributions Perdue has made to Nutrient Management practices. M. Scuse stated that no other state has done what this state has done to protect our growers and our companies from undue regulation. He added that he expects a representative from Perdue to be present at Commission meetings every quarter, and that he expects the Commission to be involved when (if) Perdue renews MOU with the EPA. J. Manchester stressed that he felt the Commission had been hard on Perdue, and that Perdue is a valuable partner.

B. Vanderwende called for a 10-minute intermission at 8:48 pm.

The meeting reconvened with B. Vanderwende calling meeting to order at 9:04 pm.

S. Hollenbeck provided an update on the Environmental Stewardship Program, noting that 3 poultry companies are taking applications. Any poultry grower qualifies to be the recipient of the award. C. Solberg would like to participate in the field visit to choose the recipient. B. Rohrer stated that E. Lewandowski is the Commission representative chosen to serve on the panel. C. Solberg stated that is fine, he would still like to participate. B. Rohrer said it is possible, however, he would not have a vote. J. Manchester asked why the Commission was not acting on the formal complaint (10-23-06) tonight. The transcripts from the hearing are not available. There was a brief discussion about upcoming Budget meeting. Some commissioners were of the opinion that topics be put on hold until they could be looked at with more objectivity and rationale.

Subcommittee Reports: Technology Subcommittee

T. Keen provided an update of the 12/05 and 12/12/06 Technology meetings to the Commission. He noted that Dr. Tom Sims of the University of Delaware presented a preliminary Nutrient Budget report, adding that a final report to the Commission will be forthcoming. He explained that DNMC staff gave an overview of urea usage for purposes of de-icing. It was found that no urea is used for de-icing in Delaware. He said that J. Manchester led the 12/12/06 discussion of Nitrogen balances and management.

Administrator's Report: *Refer to the attached Administrator's Report*

B. Rohrer explained the Administrator's Report.

Public Comments: NONE

Next Meeting:

The next meeting of the Full Commission is scheduled for January 9, 2007 at 7:00 pm.

Adjournment:

Chairman B. Vanderwende adjourned the meeting at 9:17 p.m.

Approved,

W. Vanderwende, Chairman
WRR/psd